

<p>TRINITY COUNTY PLANNING COMMISSION STAFF REPORT</p>

APPLICANT: Sandra Schafer

REPORT BY: Colleen O’Sullivan

OWNER: – Operation A-Alexander Moryakov

APN: 019-200-36 (about 14 acres)

PROJECT DESCRIPTION:

Variance from required 350 foot cannabis cultivation setback from two neighboring residences (Figures 1 and 2).

LOCATION: 740 Riewerts Ranch Road, Wildwood, CA.

PROJECT INFORMATION:

- A) Planning Area: Wildwood
- B) Existing General Plan Designation: Rural Residential
- C) Existing Zoning: Unclassified
- D) Existing Land Use: residence, commercial cannabis cultivation
- E) Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Des.</u>
North:	vacant res/residential	Unc	Rural Residential
South:	vacant res/residential	Unc	Rural Residential
East:	Industrial timberlands	TPZ	Resource
West:	vacant resource land	Unc	Resource

BACKGROUND INFORMATION:

The ordinance for “Commercial Marijuana Cultivation Regulation” includes a provision reading in part: “Cultivation will not be allowed within 350 feet of a residential structure on any adjoining parcels. Applications for a variance from this provision will be considered by the Trinity County Planning Commission.” (Ord. 315-823)

The Cannabis Cultivation Ordinance defines the term “variance” as: “Variance” is defined as Trinity County Ordinance 315 section 31.” During its November 17, 2016 meeting the Commission spent time discussing both the state and county requirements for issuing a variance.

Each zoning classification and land use has an associated set of development standards, which are specified in the Trinity County Zoning Ordinance. Both State law and the zoning ordinance provide criteria to use in evaluating a variance application. Section 65906 of the California Government Code reads as follows:

“Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.”

Section 31.A. of the zoning ordinance further elaborates on the State's Government Code standards by establishing the following criteria:

In considering a variance request, the following guidelines shall be observed:

1. No special privilege. A variance cannot be a special privilege extended to one individual property owner. The circumstances must be such that the same variance would be appropriate for any property owner facing similar circumstances.

2. Use variance prohibited. The consideration of "use variance" is specifically prohibited. These are variances, which request approval to locate a use in a zone from which it is prohibited by Ordinance.
3. Disservice not permitted. A variance must not be injurious to the public welfare, nor to adjacent properties.
4. Not adverse to a General or Specific Plan. A variance must be in harmony with the general purpose and intent of the Zoning Ordinance and cannot adversely affect the General Plan or Specific Plans of the County.

Annual Renewal:

As discussed during previous Commission meetings, variances from the cannabis cultivation setback (350 feet) are issued for a period of one year. (This should be tied to the license effective dates.) The renewal is predicted to be fairly simple and will be performed by the Planning Director or his/her designee. Some factors that would be included in the review would be any complaints received during the previous year, ensuring that the grower is in good standing with the County and State licensing requirements, and that there are no other changes to the property that could affect the continuation of the variance.

PROJECT EVALUATION:

This project is one of three variance requests that involve four parcels (see Figure 2). Staff has provided an overview of the four parcels, and the three parcels needing variances, to place the requests in context and hopefully reduce the confusion over the requested entitlements and their relation to each other. This parcel is about 11 acres in size.

The applicant (Schafer "A") is beginning the process of obtaining a Commercial Cannabis License under the county licensing program and is becoming compliant with both State and county standards. The parcel is located on 740 Riewerts Ranch Road (a private road). The site plan prepared by the consultant (Figure 3) identifies on-site development and its relationship to the affected residence (APN 019-200-35 – Operation B), which lies north of the subject parcel. Operation B has also applied for a cultivation license and supports this variance.

Wet areas associated with Hayfork Creek and topography (slope and trees) necessitate locating the cultivation area to the lower-middle part of the parcel. Downriver Consulting, who is representing all three variance applicants, has provided the following comments: "The proposed location for this garden is the best location on the property. Moving the garden to the east would require removing trees that are classified as LSR (Late Seral Reserve), which is prime spotted owl and fisher habitat. It would also require a variance from a different neighbor. Code Compliance Specialist Jeff Dickey concurs. Staff also notes that the western portion of the property consists of flat areas adjacent to Hayfork Creek, a portion of which are old flood terraces and current floodplain. Along

with the forested areas to the east, these buffer areas along creeks are important habitat for riparian and associated species. Code Compliance Specialist Jeff Dickey concurs.

As of this writing, no other comments have been received.

ENVIRONMENTAL EVALUATION:

This variance request is exempt from CEQA review under Section 15305(a) [minor alteration of land use limitations].

STAFF RECOMMENDATION:

Staff recommends the following:

Approval of the variance to allow reduction of the Cannabis cultivation setback from 350 feet to 72 feet from the residence on APN 019-200-35 (Operation B), subject to the following conditions of approval and based on the following findings of fact:

Findings of Fact for the Variance

1. There are special circumstances applicable to the property that, with strict application of the zoning ordinance, deprives it of privileges available to other properties with similar zoning in the vicinity that plan cannabis cultivation.
2. The variance is not a grant of special privilege to the applicant because relocation to the eastern part of the property would result in removal of trees that provide habitat for spotted owl and fisher, among other species. Moving the cultivation area to the west would encroach into wet areas and a riparian zone associated with Hayfork Creek.
3. The granting of the variance is in harmony with the general purpose and intent of the Zoning Ordinance provisions for commercial cannabis cultivation.
4. No opposition from surrounding property owners or review agencies was submitted that would adversely affect approval of the variance.

**CONDITIONS OF APPROVAL
SCHAFFER CANNABIS SETBACK VARIANCE (CCV-18-007)**

1. The variance is approved for a period of one year from **April 1, 2018** through **March 31, 2019**; provided, however, that the variance may be renewed annually.
 - a. Application for renewal shall be made prior to expiration of the variance, preferably at least 30 days in advance;
 - b. shall not require a formal public hearing, unless specified by the Planning Director or referred to the Planning Commission; however, written notice shall be provided by the County to surrounding property owners at least ten (10) days prior to the Planning Director's decision to approve or deny the annual renewal; and
 - c. shall be subject to a filing fee as specified by resolution of the Board of Supervisors.
 - d. The Planning Director, at his/her discretion, may approve, deny or refer the annual renewal request to the Planning Commission. The director shall not add or modify conditions of approval applied by the Planning Commission. If submitted to the Planning Commission by the Planning Director for action, no additional fees will be required.
 - e. Action to renew the variance by the Planning Director may be appealed to the Planning Commission in accordance with Section 34 of the Zoning Ordinance, including the required appeal fee.
2. The variance shall be subject to the securing of all necessary permits, licenses, and approvals for the proposed cannabis cultivation operation from all County and State agencies having jurisdiction over any aspect the operation.
3. Structures on the property shall be in compliance with the California Building Code and the Trinity County Code.
4. The variance shall become effective after all applicable appeal periods have been expired or appeal processes have been exhausted. The applicant has the sole responsibility for renewing this variance before the expiration date listed above. The County will not provide a notice prior to the expiration date.

FIGURE 1 - LOCATION MAP AND ZONING
CCV-2018-007 "A"

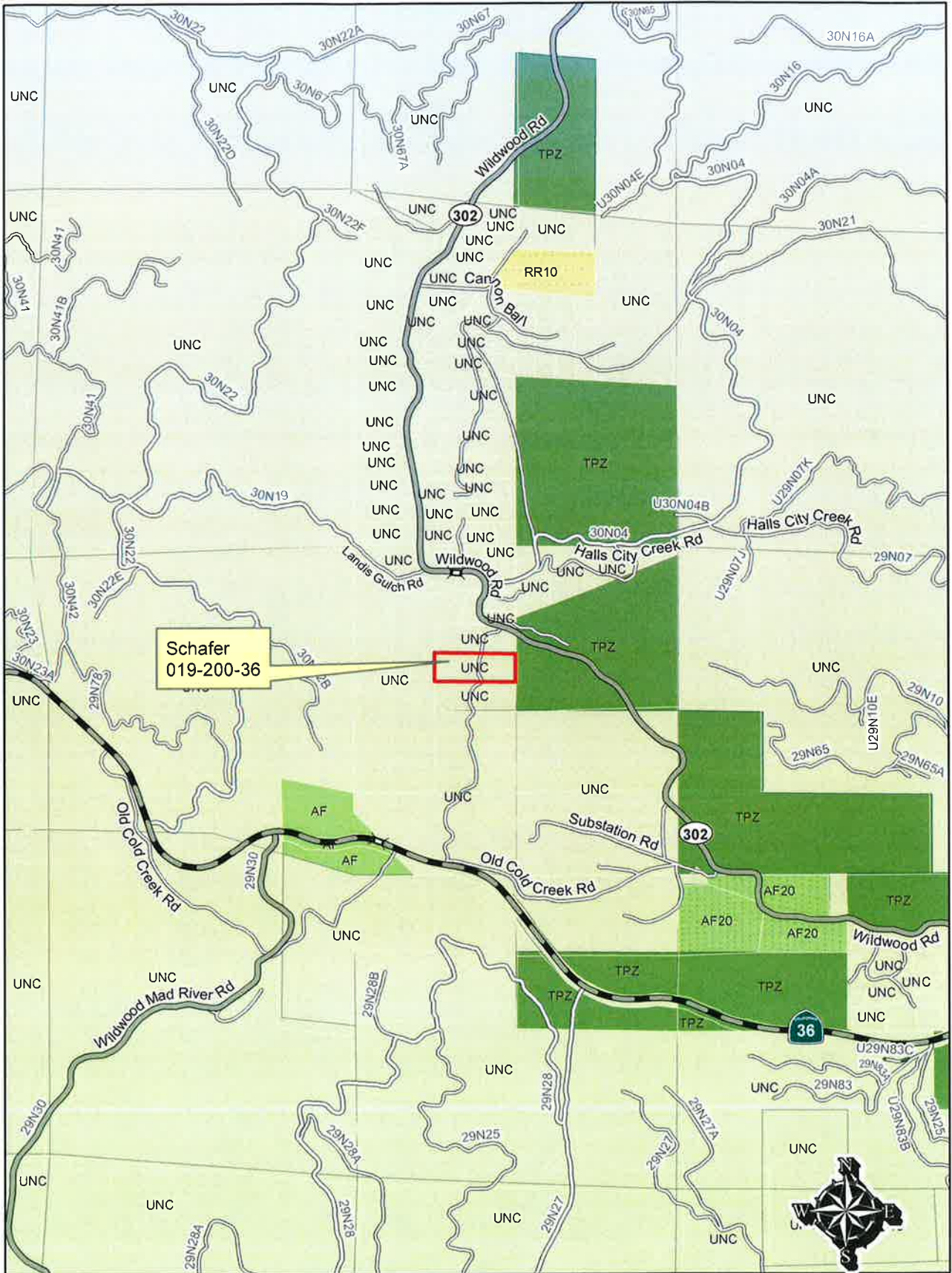
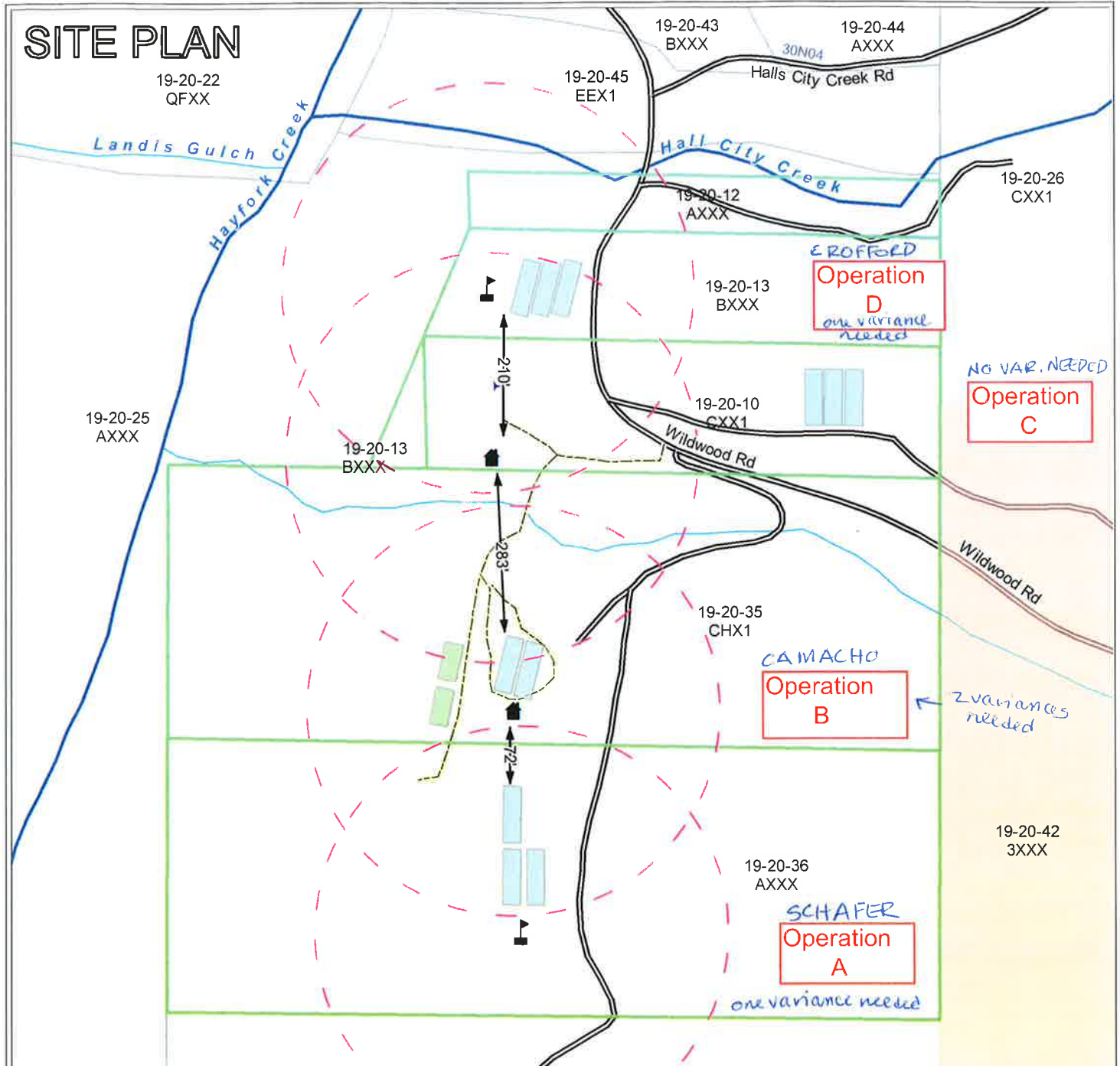


FIGURE 2



Legend

350' Residential Structure Buffer	Private / Other	Roads	Streams
Future Residence	Private: Timber Production	Roads	Perennial
Residence	Greenhouse, Current	Driveway	Intermittent
Subject Sites	Future Greenhouse		

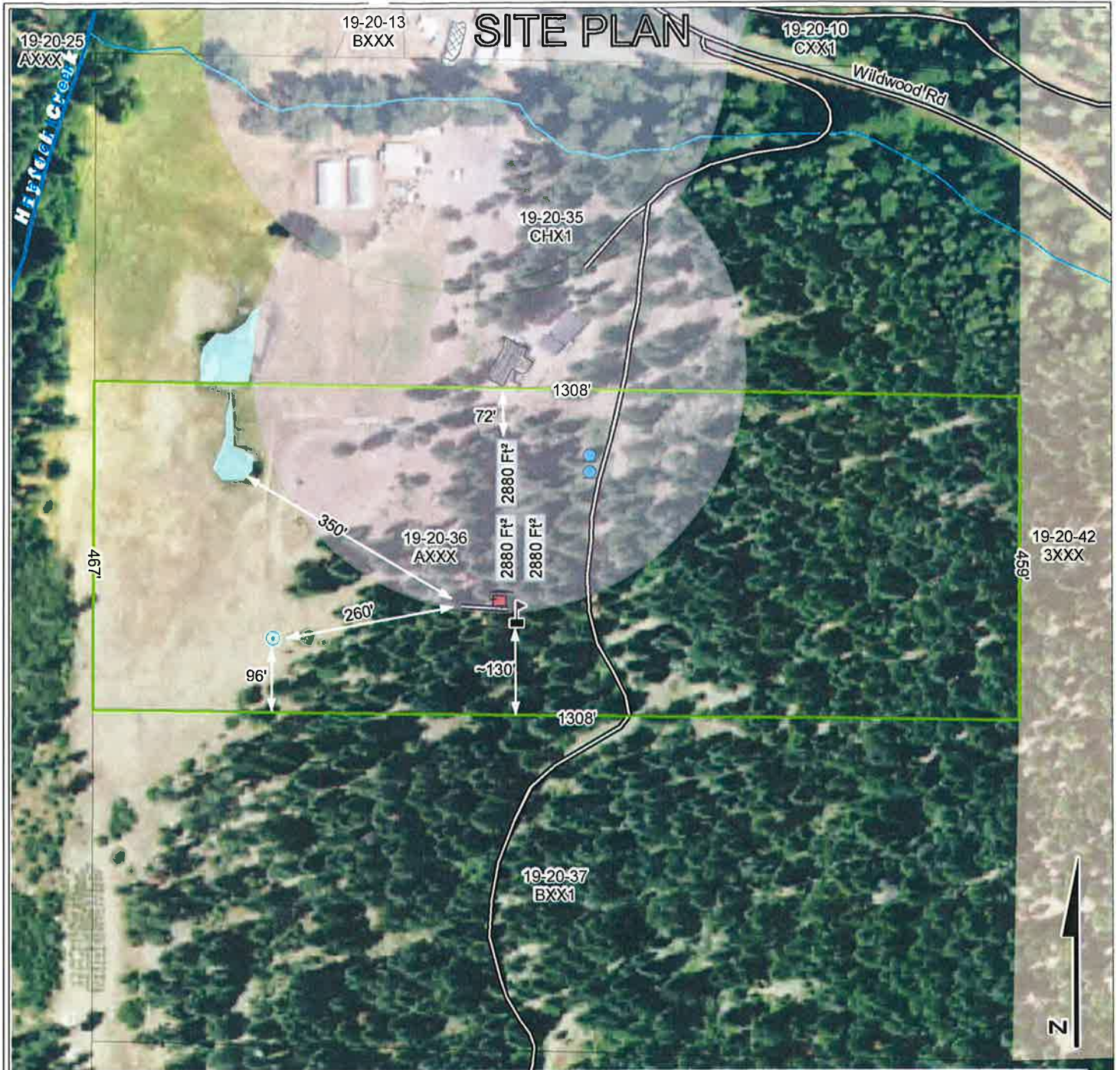
0 185 370 740 Feet

2016 NAIP Aerial Imagery
 Coordinate System: NAD 1983 UTM Zone 10N
 Projection: Transverse Mercator
 1 Positions, scales and dimensions approximate

Down River Consulting

TRINITY COUNTY PLANNING DEPARTMENT
 APPLICANT PREPARED SITE PLAN ADDENDUM
 Application No. CCV-18-007 (SCHAFER "A")
 Drawn By: H. BAKER APN: 019-200-36
 Date: 2/5/2018 Zoning: DNC
 Scale: 1:3,000 Lot Area: 11 acres

FIGURE 3



Legend			
	Subject Site		Future Residence
	Private / Other		Future Greenhouse
	Private: Timber Production		Septic
	350' Residential Structure Buffer		Leach Lines
			Well
			Water Storage
			Streams
			Perennial
			Roads
			Intermittent
			Ponds

0 150 300 600 Feet

2016 NAIP Aerial Imagery
 Coordinate System: NAD 1983 UTM Zone 10N
 Projection: Transverse Mercator

1 Positions, scales and dimensions approximate

Down River Consulting

TRINITY COUNTY PLANNING DEPARTMENT

APPLICANT PREPARED SITE PLAN

Application No. CCV-18-007 (SCHAFER-"A")

Drawn By: H. BAKER APN: 019-200-36-00

Date: 1/16/2018 Zoning: UNC

Scale: 1:2,500 Lot Area: 11 Acres